

FEDERAL AVIATION REGULATIONS



DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION-WASHINGTON, DC

CHANGE 1

EFFECTIVE: JULY 15, 1996
FEBRUARY 7, 1997

Part 119—Certification: Air Carriers and Commercial Operators

This change incorporates one amendment and one Special Federal Aviation Regulation:

Amendment 119-2, Operating Requirements: Domestic, Flag, Supplemental, Commuter, and On-Demand Operations: Corrections and Editorial Changes, adopted June 4 and effective July 15, 1996. Sections 119.2, 119.3, 119.21, 119.23, 119.33, 119.63, and 119.67 are affected.

Special Federal Aviation Regulation No. 78, Special Flight Rules in the Vicinity of the Rocky Mountain National Park, adopted January 3 and effective February 7, 1997.

Bold brackets enclose the most recently added or changed material. The amendment number and effective date of new material appear in bold brackets at the end of each affected section.

Page Control Chart

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Suggest filing this transmittal at the beginning of the FAR. It will provide a method for determining that all changes have been received as listed in the current edition of AC 00-44, Status of Federal Aviation Regulations, and a check for determining if the FAR contains the proper pages.

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location are specifically negotiated with the customer or the customer's representative that are any of the following types of operations:

(i) Common carriage operations conducted with airplanes, including turbojet-powered airplanes, having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, except that operations using a specific airplane that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations are considered supplemental operations;

(ii) Noncommon or private carriage operations conducted with airplanes having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, [and] a payload capacity of less than 6,000 pounds; or

(iii) Any rotorcraft operation.

(2) Scheduled passenger-carrying operations conducted with one of the following types of aircraft with a frequency of operations of less than five round trips per week on at least one route between two or more points according to the published flight schedules:

(i) Airplanes, other than turbojet powered airplanes, having a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

(ii) Rotorcraft.

(3) All-cargo operations conducted with airplanes having a payload capacity of 7,500 pounds or less, or with rotorcraft.

Passenger-carrying operation means any aircraft operation carrying any person, unless the only persons on the aircraft are those identified in § 121.583(a) or § 135.85 of this chapter, as applicable. An aircraft used in a passenger-carrying operation may also carry cargo or mail in addition to passengers.

Principal base of operations means the primary operating location of a certificate holder as established by the certificate holder.

Provisional airport means an airport approved by the Administrator for use by a certificate holder for the purpose of providing service to a community when the regular airport used by the certificate holder is not available.

Regular airport means an airport used by a certificate holder in scheduled operations and listed in its operations specifications.

Scheduled operation means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the certificate holder or its representative offers in advance the departure location, departure time, and arrival location. It does not include any operation that is a charter operation.

Supplemental operation means any common carriage operation for compensation or hire conducted with any airplane described in paragraph (1) of this definition that is a type of operation described in paragraph (2) of this definition:

(1) Airplanes:

(i) Airplanes having a passenger-seat configuration of more than 30 seats, excluding each crewmember seat;

(ii) Airplanes having a payload capacity of more than 7,500 pounds; or

(iii) [Each propeller-powered airplane having a passenger-seat configuration of more than 9 seats and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations; or

[(iv) Each turbojet powered airplane having a passenger seat configuration of 1 or more and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations.]

(2) Types of operation:

(i) [Passenger-carrying operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative; or]

(ii) All-cargo operations.

Wet Lease means any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember. A wet lease does not include a code-sharing arrangement.

[When common carriage is not involved or operations not involving common carriage means any of the following:]

(1) Noncommon carriage.

(2) Operations in which persons or cargo are transported without compensation or hire.

(3) Operations not involving the transportation of persons or cargo.

(4) Private carriage.

(Amdt. 119-1, Eff. 2/26/96); [(Amdt. 119-2, Eff. 7/15/96)]

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(i) Airplanes, other than turbojet powered airplanes, having a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

(ii) Rotorcraft.

(3) All-cargo operations conducted with airplanes having a payload capacity of 7,500 pounds or less, or with rotorcraft.

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(1) Airplanes:

(i) Airplanes having a passenger-seat configuration of more than 30 seats, excluding each crewmember seat;

(ii) Airplanes having a payload capacity of more than 7,500 pounds; or

(iii) [Each propeller-powered airplane having a passenger-seat configuration of more than 9 seats and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations; or

[(iv) Each turbojet powered airplane having a passenger seat configuration of 1 or more and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations.]

(2) Types of operation:

(i) [Passenger-carrying operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative; or]

(ii) All-cargo operations.

Wet Lease means any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember. A wet lease does not include a code-sharing arrangement.

[When common carriage is not involved or operations not involving common carriage means any of the following:]

(1) Noncommon carriage.

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(4) Private carriage.

(Amdt. 119-1, Eff. 2/26/96); [(Amdt. 119-2, Eff. 7/15/96)]

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(ii) Noncommon or private carriage operations conducted with airplanes having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, [and] a payload capacity of less than 6,000 pounds; or

(iii) Any rotorcraft operation.

(2) Scheduled passenger-carrying operations conducted with one of the following types of aircraft with a frequency of operations of less than five round trips per week on at least one route between two or more points according to the published flight schedules:

(i) Airplanes, other than turbojet powered airplanes, having a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

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(1) Airplanes:

(i) Airplanes having a passenger-seat configuration of more than 30 seats, excluding each crewmember seat;

(ii) Airplanes having a payload capacity of more than 7,500 pounds; or

(iii) [Each propeller-powered airplane having a passenger-seat configuration of more than 9 seats and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations; or

[(iv) Each turbojet powered airplane having a passenger seat configuration of 1 or more and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations.]

(2) Types of operation:

(i) [Passenger-carrying operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative; or]

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(Amdt. 119-1, Eff. 2/26/96); [(Amdt. 119-2, Eff. 7/15/96)]

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(iii) Any rotorcraft operation.

(2) Scheduled passenger-carrying operations conducted with one of the following types of aircraft with a frequency of operations of less than five round trips per week on at least one route between two or more points according to the published flight schedules:

(i) Airplanes, other than turbojet powered airplanes, having a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

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(ii) Airplanes having a payload capacity of more than 7,500 pounds; or

(iii) [Each propeller-powered airplane having a passenger-seat configuration of more than 9 seats and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations; or

[(iv) Each turbojet powered airplane having a passenger seat configuration of 1 or more and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations.]

(2) Types of operation:

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(iii) [Each propeller-powered airplane having a passenger-seat configuration of more than 9 seats and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations; or

[(iv) Each turbojet powered airplane having a passenger seat configuration of 1 or more and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations.]

(2) Types of operation:

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[(iv) Each turbojet powered airplane having a passenger seat configuration of 1 or more and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations.]

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(i) [Passenger-carrying operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative; or]

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[(iv) Each turbojet powered airplane having a passenger seat configuration of 1 or more and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations.]

(2) Types of operation:

(i) [Passenger-carrying operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative; or]

(ii) All-cargo operations.

Wet Lease means any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember. A wet lease does not include a code-sharing arrangement.

[When common carriage is not involved or operations not involving common carriage means any of the following:]

(1) Noncommon carriage.

(2) Operations in which persons or cargo are transported without compensation or hire.

(3) Operations not involving the transportation of persons or cargo.

(4) Private carriage.

(Amdt. 119-1, Eff. 2/26/96); [(Amdt. 119-2, Eff. 7/15/96)]

the degree of safety required in the public interest.

(h) Each financial statement containing financial information required by paragraph (g) of this section must be based on accounts prepared and maintained on an accrual basis in accordance with generally accepted accounting principles applied on a consistent basis, and must contain the name and address of the applicant's public accounting firm, if any. Information submitted must be signed by an officer, owner, or partner of the applicant or certificate holder.

§ 119.37 Contents of an Air Carrier Certificate or Operating Certificate.

The Air Carrier Certificate or Operating Certificate includes-

- (a) The certificate holder's name;
- (b) The location of the certificate holder's principal base of operations;
- (c) The certificate number;
- (d) The certificate's effective date; and
- (e) The name or the designator of the certificate-holding district office.

§ 119.39 Issuing or denying a certificate.

(a) An applicant may be issued an Air Carrier Certificate or Operating Certificate if, after investigation, the Administrator finds that the applicant—

- (1) Meets the applicable requirements of this part;
- (2) Holds the economic authority applicable to the kinds of operations to be conducted, issued by the Department of Transportation, if required; and

(3) Is properly and adequately equipped in accordance with the requirements of this chapter and is able to conduct a safe operation under appropriate provisions of part 121 or part 135 of this chapter and operations specifications issued under this part.

(b) An application for a certificate may be denied if the Administrator finds that-

(1) The applicant is not properly or adequately equipped or is not able to conduct safe operations under this subchapter;

(2) The applicant previously held an Air Carrier Certificate or Operating Certificate which was revoked;

(3) The applicant intends to or fills a key management position listed in § 119.65(a) or § 119.69(a), as applicable, with an individual who exercised control over or who held the same or

a similar position with a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process;

(4) An individual who will have control over or have a substantial ownership interest in the applicant had the same or similar control or interest in a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process; or

(5) In the case of an applicant for an Operating Certificate for intrastate common carriage, that for financial reasons the applicant is not able to conduct a safe operation.

§ 119.41 Amending a certificate.

(a) The Administrator may amend any certificate issued under this part if-

(1) The Administrator determines, under 49 U.S.C. 44709 and part 13 of this chapter, that safety in air commerce and the public interest requires the amendment; or

(2) The certificate holder applies for the amendment and the certificate-holding district office determines that safety in air commerce and the public interest allows the amendment.

(b) When the Administrator proposes to issue an order amending, suspending, or revoking all or part of any certificate, the procedure in § 13.19 of this chapter applies.

(c) When the certificate holder applies for an amendment of its certificate, the following procedure applies:

(1) The certificate holder must file an application to amend its certificate with the certificate-holding district office at least 15 days before the date proposed by the applicant for the amendment to become effective, unless the administrator approves filing within a shorter period; and

(2) The application must be submitted to the certificate-holding district office in the form and manner prescribed by the Administrator.

(d) When a certificate holder seeks reconsideration of a decision from the certificate-holding district office concerning amendments of a certificate, the following procedure applies:

(1) The petition for reconsideration must be made within 30 days after the certificate holder receives the notice of denial; and

the degree of safety required in the public interest.

(h) Each financial statement containing financial information required by paragraph (g) of this section must be based on accounts prepared and maintained on an accrual basis in accordance with generally accepted accounting principles applied on a consistent basis, and must contain the name and address of the applicant's public accounting firm, if any. Information submitted must be signed by an officer, owner, or partner of the applicant or certificate holder.

§ 119.37 Contents of an Air Carrier Certificate or Operating Certificate.

The Air Carrier Certificate or Operating Certificate includes-

- (a) The certificate holder's name;
- (b) The location of the certificate holder's principal base of operations;
- (c) The certificate number;
- (d) The certificate's effective date; and
- (e) The name or the designator of the certificate-holding district office.

§ 119.39 Issuing or denying a certificate.

(a) An applicant may be issued an Air Carrier Certificate or Operating Certificate if, after investigation, the Administrator finds that the applicant—

- (1) Meets the applicable requirements of this part;
- (2) Holds the economic authority applicable to the kinds of operations to be conducted, issued by the Department of Transportation, if required; and

(3) Is properly and adequately equipped in accordance with the requirements of this chapter and is able to conduct a safe operation under appropriate provisions of part 121 or part 135 of this chapter and operations specifications issued under this part.

(b) An application for a certificate may be denied if the Administrator finds that-

(1) The applicant is not properly or adequately equipped or is not able to conduct safe operations under this subchapter;

(2) The applicant previously held an Air Carrier Certificate or Operating Certificate which was revoked;

(3) The applicant intends to or fills a key management position listed in § 119.65(a) or § 119.69(a), as applicable, with an individual who exercised control over or who held the same or

a similar position with a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process;

(4) An individual who will have control over or have a substantial ownership interest in the applicant had the same or similar control or interest in a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process; or

(5) In the case of an applicant for an Operating Certificate for intrastate common carriage, that for financial reasons the applicant is not able to conduct a safe operation.

§ 119.41 Amending a certificate.

(a) The Administrator may amend any certificate issued under this part if-

(1) The Administrator determines, under 49 U.S.C. 44709 and part 13 of this chapter, that safety in air commerce and the public interest requires the amendment; or

(2) The certificate holder applies for the amendment and the certificate-holding district office determines that safety in air commerce and the public interest allows the amendment.

(b) When the Administrator proposes to issue an order amending, suspending, or revoking all or part of any certificate, the procedure in § 13.19 of this chapter applies.

(c) When the certificate holder applies for an amendment of its certificate, the following procedure applies:

(1) The certificate holder must file an application to amend its certificate with the certificate-holding district office at least 15 days before the date proposed by the applicant for the amendment to become effective, unless the administrator approves filing within a shorter period; and

(2) The application must be submitted to the certificate-holding district office in the form and manner prescribed by the Administrator.

(d) When a certificate holder seeks reconsideration of a decision from the certificate-holding district office concerning amendments of a certificate, the following procedure applies:

(1) The petition for reconsideration must be made within 30 days after the certificate holder receives the notice of denial; and

the degree of safety required in the public interest.

(h) Each financial statement containing financial information required by paragraph (g) of this section must be based on accounts prepared and maintained on an accrual basis in accordance with generally accepted accounting principles applied on a consistent basis, and must contain the name and address of the applicant's public accounting firm, if any. Information submitted must be signed by an officer, owner, or partner of the applicant or certificate holder.

§ 119.37 Contents of an Air Carrier Certificate or Operating Certificate.

The Air Carrier Certificate or Operating Certificate includes-

- (a) The certificate holder's name;
- (b) The location of the certificate holder's principal base of operations;
- (c) The certificate number;
- (d) The certificate's effective date; and
- (e) The name or the designator of the certificate-holding district office.

§ 119.39 Issuing or denying a certificate.

(a) An applicant may be issued an Air Carrier Certificate or Operating Certificate if, after investigation, the Administrator finds that the applicant—

- (1) Meets the applicable requirements of this part;
- (2) Holds the economic authority applicable to the kinds of operations to be conducted, issued by the Department of Transportation, if required; and

(3) Is properly and adequately equipped in accordance with the requirements of this chapter and is able to conduct a safe operation under appropriate provisions of part 121 or part 135 of this chapter and operations specifications issued under this part.

(b) An application for a certificate may be denied if the Administrator finds that-

(1) The applicant is not properly or adequately equipped or is not able to conduct safe operations under this subchapter;

(2) The applicant previously held an Air Carrier Certificate or Operating Certificate which was revoked;

(3) The applicant intends to or fills a key management position listed in § 119.65(a) or § 119.69(a), as applicable, with an individual who exercised control over or who held the same or

a similar position with a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process;

(4) An individual who will have control over or have a substantial ownership interest in the applicant had the same or similar control or interest in a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process; or

(5) In the case of an applicant for an Operating Certificate for intrastate common carriage, that for financial reasons the applicant is not able to conduct a safe operation.

§ 119.41 Amending a certificate.

(a) The Administrator may amend any certificate issued under this part if-

(1) The Administrator determines, under 49 U.S.C. 44709 and part 13 of this chapter, that safety in air commerce and the public interest requires the amendment; or

(2) The certificate holder applies for the amendment and the certificate-holding district office determines that safety in air commerce and the public interest allows the amendment.

(b) When the Administrator proposes to issue an order amending, suspending, or revoking all or part of any certificate, the procedure in § 13.19 of this chapter applies.

(c) When the certificate holder applies for an amendment of its certificate, the following procedure applies:

(1) The certificate holder must file an application to amend its certificate with the certificate-holding district office at least 15 days before the date proposed by the applicant for the amendment to become effective, unless the administrator approves filing within a shorter period; and

(2) The application must be submitted to the certificate-holding district office in the form and manner prescribed by the Administrator.

(d) When a certificate holder seeks reconsideration of a decision from the certificate-holding district office concerning amendments of a certificate, the following procedure applies:

(1) The petition for reconsideration must be made within 30 days after the certificate holder receives the notice of denial; and

the degree of safety required in the public interest.

(h) Each financial statement containing financial information required by paragraph (g) of this section must be based on accounts prepared and maintained on an accrual basis in accordance with generally accepted accounting principles applied on a consistent basis, and must contain the name and address of the applicant's public accounting firm, if any. Information submitted must be signed by an officer, owner, or partner of the applicant or certificate holder.

§ 119.37 Contents of an Air Carrier Certificate or Operating Certificate.

The Air Carrier Certificate or Operating Certificate includes-

- (a) The certificate holder's name;
- (b) The location of the certificate holder's principal base of operations;
- (c) The certificate number;
- (d) The certificate's effective date; and
- (e) The name or the designator of the certificate-holding district office.

§ 119.39 Issuing or denying a certificate.

(a) An applicant may be issued an Air Carrier Certificate or Operating Certificate if, after investigation, the Administrator finds that the applicant—

- (1) Meets the applicable requirements of this part;
- (2) Holds the economic authority applicable to the kinds of operations to be conducted, issued by the Department of Transportation, if required; and

(3) Is properly and adequately equipped in accordance with the requirements of this chapter and is able to conduct a safe operation under appropriate provisions of part 121 or part 135 of this chapter and operations specifications issued under this part.

(b) An application for a certificate may be denied if the Administrator finds that-

(1) The applicant is not properly or adequately equipped or is not able to conduct safe operations under this subchapter;

(2) The applicant previously held an Air Carrier Certificate or Operating Certificate which was revoked;

(3) The applicant intends to or fills a key management position listed in § 119.65(a) or § 119.69(a), as applicable, with an individual who exercised control over or who held the same or

a similar position with a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process;

(4) An individual who will have control over or have a substantial ownership interest in the applicant had the same or similar control or interest in a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process; or

(5) In the case of an applicant for an Operating Certificate for intrastate common carriage, that for financial reasons the applicant is not able to conduct a safe operation.

§ 119.41 Amending a certificate.

(a) The Administrator may amend any certificate issued under this part if-

(1) The Administrator determines, under 49 U.S.C. 44709 and part 13 of this chapter, that safety in air commerce and the public interest requires the amendment; or

(2) The certificate holder applies for the amendment and the certificate-holding district office determines that safety in air commerce and the public interest allows the amendment.

(b) When the Administrator proposes to issue an order amending, suspending, or revoking all or part of any certificate, the procedure in § 13.19 of this chapter applies.

(c) When the certificate holder applies for an amendment of its certificate, the following procedure applies:

(1) The certificate holder must file an application to amend its certificate with the certificate-holding district office at least 15 days before the date proposed by the applicant for the amendment to become effective, unless the administrator approves filing within a shorter period; and

(2) The application must be submitted to the certificate-holding district office in the form and manner prescribed by the Administrator.

(d) When a certificate holder seeks reconsideration of a decision from the certificate-holding district office concerning amendments of a certificate, the following procedure applies:

(1) The petition for reconsideration must be made within 30 days after the certificate holder receives the notice of denial; and

the degree of safety required in the public interest.

(h) Each financial statement containing financial information required by paragraph (g) of this section must be based on accounts prepared and maintained on an accrual basis in accordance with generally accepted accounting principles applied on a consistent basis, and must contain the name and address of the applicant's public accounting firm, if any. Information submitted must be signed by an officer, owner, or partner of the applicant or certificate holder.

§ 119.37 Contents of an Air Carrier Certificate or Operating Certificate.

The Air Carrier Certificate or Operating Certificate includes-

- (a) The certificate holder's name;
- (b) The location of the certificate holder's principal base of operations;
- (c) The certificate number;
- (d) The certificate's effective date; and
- (e) The name or the designator of the certificate-holding district office.

§ 119.39 Issuing or denying a certificate.

(a) An applicant may be issued an Air Carrier Certificate or Operating Certificate if, after investigation, the Administrator finds that the applicant—

- (1) Meets the applicable requirements of this part;
- (2) Holds the economic authority applicable to the kinds of operations to be conducted, issued by the Department of Transportation, if required; and

(3) Is properly and adequately equipped in accordance with the requirements of this chapter and is able to conduct a safe operation under appropriate provisions of part 121 or part 135 of this chapter and operations specifications issued under this part.

(b) An application for a certificate may be denied if the Administrator finds that-

(1) The applicant is not properly or adequately equipped or is not able to conduct safe operations under this subchapter;

(2) The applicant previously held an Air Carrier Certificate or Operating Certificate which was revoked;

(3) The applicant intends to or fills a key management position listed in § 119.65(a) or § 119.69(a), as applicable, with an individual who exercised control over or who held the same or

a similar position with a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process;

(4) An individual who will have control over or have a substantial ownership interest in the applicant had the same or similar control or interest in a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process; or

(5) In the case of an applicant for an Operating Certificate for intrastate common carriage, that for financial reasons the applicant is not able to conduct a safe operation.

§ 119.41 Amending a certificate.

(a) The Administrator may amend any certificate issued under this part if-

(1) The Administrator determines, under 49 U.S.C. 44709 and part 13 of this chapter, that safety in air commerce and the public interest requires the amendment; or

(2) The certificate holder applies for the amendment and the certificate-holding district office determines that safety in air commerce and the public interest allows the amendment.

(b) When the Administrator proposes to issue an order amending, suspending, or revoking all or part of any certificate, the procedure in § 13.19 of this chapter applies.

(c) When the certificate holder applies for an amendment of its certificate, the following procedure applies:

(1) The certificate holder must file an application to amend its certificate with the certificate-holding district office at least 15 days before the date proposed by the applicant for the amendment to become effective, unless the administrator approves filing within a shorter period; and

(2) The application must be submitted to the certificate-holding district office in the form and manner prescribed by the Administrator.

(d) When a certificate holder seeks reconsideration of a decision from the certificate-holding district office concerning amendments of a certificate, the following procedure applies:

(1) The petition for reconsideration must be made within 30 days after the certificate holder receives the notice of denial; and

(3) The certificate holder will perform the operation under a contract or subcontract for the benefit of a U.S. armed service; and

(4) The Administrator finds that the deviation is based on grounds other than economic advantage either to the certificate holder or to the United States.

(d) In the case where the Administrator authorizes a deviation under this section, the Administrator will issue an appropriate amendment to the certificate holder's operations specifications.

(e) The Administrator may, at any time, terminate any grant of deviation authority issued under this section.

§ 119.57 Obtaining deviation authority to perform an emergency operation.

(a) In emergency conditions, the Administrator may authorize deviations if—

(1) Those conditions necessitate the transportation of persons or supplies for the protection of life or property; and

(2) The Administrator finds that a deviation is necessary for the expeditious conduct of the operations.

(b) When the Administrator authorizes deviations for operations under emergency conditions—

(1) The Administrator will issue an appropriate amendment to the certificate holder's operations specifications; or

(2) If the nature of the emergency does not permit timely amendment of the operations specifications—

(i) The Administrator may authorize the deviation orally; and

(ii) The certificate holder shall provide documentation describing the nature of the emergency to the certificate-holding district office within 24 hours after completing the operation.

§ 119.58 [Removed]

[(Amdt. 119-1, Eff. 2/26/96)]

§ 119.59 Conducting tests and inspections.

(a) At any time or place, the Administrator may conduct an inspection or test to determine whether a certificate holder under this part is complying with title 49 of the United States Code, applicable regulations, the certificate, or the certificate holder's operations specifications.

(b) The certificate holder must—

(1) Make available to the Administrator at the certificate holder's principal base of operations—

(i) The certificate holder's Air Carrier Certificate or the certificate holder's Operating Certificate and the certificate holder's operations specifications; and

(ii) A current listing that will include the location and persons responsible for each record, document, and report required to be kept by the certificate holder under title 49 of the United States Code applicable to the operation of the certificate holder.

(2) Allow the Administrator to make any test or inspection to determine compliance respecting any matter stated in paragraph (a) of this section.

(c) Each employee of, or person used by, the certificate holder who is responsible for maintaining the certificate holder's records must make those records available to the Administrator.

(d) The Administrator may determine a certificate holder's continued eligibility to hold its certificate and/or operations specifications on any grounds listed in paragraph (a) of this section, or any other appropriate grounds.

(e) Failure by any certificate holder to make available to the Administrator upon request, the certificate, operations specifications, or any required record, document, or report is grounds for suspension of all or any part of the certificate holder's certificate and operations specifications.

(f) In the case of operators conducting intrastate common carriage operations, these inspections and tests include inspections and tests of financial books and records.

§ 119.61 Duration and surrender of certificate and operations specifications.

(a) An Air Carrier Certificate or Operating Certificate issued under this part is effective until—

(1) The certificate holder surrenders it to the Administrator; or

(2) The Administrator suspends, revokes, or otherwise terminates the certificate.

(b) Operations specifications issued under this part, part 121, or part 135 of this chapter are effective unless—

(1) The Administrator suspends, revokes, or otherwise terminates the certificate;

(2) The operations specifications are amended as provided in § 119.51;

(3) The certificate holder does not conduct a kind of operation for more than the time specified in § 119.63 and fails to follow the procedures

(3) The certificate holder will perform the operation under a contract or subcontract for the benefit of a U.S. armed service; and

(4) The Administrator finds that the deviation is based on grounds other than economic advantage either to the certificate holder or to the United States.

(d) In the case where the Administrator authorizes a deviation under this section, the Administrator will issue an appropriate amendment to the certificate holder's operations specifications.

(e) The Administrator may, at any time, terminate any grant of deviation authority issued under this section.

§ 119.57 Obtaining deviation authority to perform an emergency operation.

(a) In emergency conditions, the Administrator may authorize deviations if—

(1) Those conditions necessitate the transportation of persons or supplies for the protection of life or property; and

(2) The Administrator finds that a deviation is necessary for the expeditious conduct of the operations.

(b) When the Administrator authorizes deviations for operations under emergency conditions—

(1) The Administrator will issue an appropriate amendment to the certificate holder's operations specifications; or

(2) If the nature of the emergency does not permit timely amendment of the operations specifications—

(i) The Administrator may authorize the deviation orally; and

(ii) The certificate holder shall provide documentation describing the nature of the emergency to the certificate-holding district office within 24 hours after completing the operation.

§ 119.58 [Removed]

[(Amdt. 119-1, Eff. 2/26/96)]

§ 119.59 Conducting tests and inspections.

(a) At any time or place, the Administrator may conduct an inspection or test to determine whether a certificate holder under this part is complying with title 49 of the United States Code, applicable regulations, the certificate, or the certificate holder's operations specifications.

(b) The certificate holder must—

(1) Make available to the Administrator at the certificate holder's principal base of operations—

(i) The certificate holder's Air Carrier Certificate or the certificate holder's Operating Certificate and the certificate holder's operations specifications; and

(ii) A current listing that will include the location and persons responsible for each record, document, and report required to be kept by the certificate holder under title 49 of the United States Code applicable to the operation of the certificate holder.

(2) Allow the Administrator to make any test or inspection to determine compliance respecting any matter stated in paragraph (a) of this section.

(c) Each employee of, or person used by, the certificate holder who is responsible for maintaining the certificate holder's records must make those records available to the Administrator.

(d) The Administrator may determine a certificate holder's continued eligibility to hold its certificate and/or operations specifications on any grounds listed in paragraph (a) of this section, or any other appropriate grounds.

(e) Failure by any certificate holder to make available to the Administrator upon request, the certificate, operations specifications, or any required record, document, or report is grounds for suspension of all or any part of the certificate holder's certificate and operations specifications.

(f) In the case of operators conducting intrastate common carriage operations, these inspections and tests include inspections and tests of financial books and records.

§ 119.61 Duration and surrender of certificate and operations specifications.

(a) An Air Carrier Certificate or Operating Certificate issued under this part is effective until—

(1) The certificate holder surrenders it to the Administrator; or

(2) The Administrator suspends, revokes, or otherwise terminates the certificate.

(b) Operations specifications issued under this part, part 121, or part 135 of this chapter are effective unless—

(1) The Administrator suspends, revokes, or otherwise terminates the certificate;

(2) The operations specifications are amended as provided in § 119.51;

(3) The certificate holder does not conduct a kind of operation for more than the time specified in § 119.63 and fails to follow the procedures

(3) The certificate holder will perform the operation under a contract or subcontract for the benefit of a U.S. armed service; and

(4) The Administrator finds that the deviation is based on grounds other than economic advantage either to the certificate holder or to the United States.

(d) In the case where the Administrator authorizes a deviation under this section, the Administrator will issue an appropriate amendment to the certificate holder's operations specifications.

(e) The Administrator may, at any time, terminate any grant of deviation authority issued under this section.

§ 119.57 Obtaining deviation authority to perform an emergency operation.

(a) In emergency conditions, the Administrator may authorize deviations if—

(1) Those conditions necessitate the transportation of persons or supplies for the protection of life or property; and

(2) The Administrator finds that a deviation is necessary for the expeditious conduct of the operations.

(b) When the Administrator authorizes deviations for operations under emergency conditions—

(1) The Administrator will issue an appropriate amendment to the certificate holder's operations specifications; or

(2) If the nature of the emergency does not permit timely amendment of the operations specifications—

(i) The Administrator may authorize the deviation orally; and

(ii) The certificate holder shall provide documentation describing the nature of the emergency to the certificate-holding district office within 24 hours after completing the operation.

§ 119.58 [Removed]

[(Amdt. 119-1, Eff. 2/26/96)]

§ 119.59 Conducting tests and inspections.

(a) At any time or place, the Administrator may conduct an inspection or test to determine whether a certificate holder under this part is complying with title 49 of the United States Code, applicable regulations, the certificate, or the certificate holder's operations specifications.

(b) The certificate holder must—

(1) Make available to the Administrator at the certificate holder's principal base of operations—

(i) The certificate holder's Air Carrier Certificate or the certificate holder's Operating Certificate and the certificate holder's operations specifications; and

(ii) A current listing that will include the location and persons responsible for each record, document, and report required to be kept by the certificate holder under title 49 of the United States Code applicable to the operation of the certificate holder.

(2) Allow the Administrator to make any test or inspection to determine compliance respecting any matter stated in paragraph (a) of this section.

(c) Each employee of, or person used by, the certificate holder who is responsible for maintaining the certificate holder's records must make those records available to the Administrator.

(d) The Administrator may determine a certificate holder's continued eligibility to hold its certificate and/or operations specifications on any grounds listed in paragraph (a) of this section, or any other appropriate grounds.

(e) Failure by any certificate holder to make available to the Administrator upon request, the certificate, operations specifications, or any required record, document, or report is grounds for suspension of all or any part of the certificate holder's certificate and operations specifications.

(f) In the case of operators conducting intrastate common carriage operations, these inspections and tests include inspections and tests of financial books and records.

§ 119.61 Duration and surrender of certificate and operations specifications.

(a) An Air Carrier Certificate or Operating Certificate issued under this part is effective until—

(1) The certificate holder surrenders it to the Administrator; or

(2) The Administrator suspends, revokes, or otherwise terminates the certificate.

(b) Operations specifications issued under this part, part 121, or part 135 of this chapter are effective unless—

(1) The Administrator suspends, revokes, or otherwise terminates the certificate;

(2) The operations specifications are amended as provided in § 119.51;

(3) The certificate holder does not conduct a kind of operation for more than the time specified in § 119.63 and fails to follow the procedures

(3) The certificate holder will perform the operation under a contract or subcontract for the benefit of a U.S. armed service; and

(4) The Administrator finds that the deviation is based on grounds other than economic advantage either to the certificate holder or to the United States.

(d) In the case where the Administrator authorizes a deviation under this section, the Administrator will issue an appropriate amendment to the certificate holder's operations specifications.

(e) The Administrator may, at any time, terminate any grant of deviation authority issued under this section.

§ 119.57 Obtaining deviation authority to perform an emergency operation.

(a) In emergency conditions, the Administrator may authorize deviations if—

(1) Those conditions necessitate the transportation of persons or supplies for the protection of life or property; and

(2) The Administrator finds that a deviation is necessary for the expeditious conduct of the operations.

(b) When the Administrator authorizes deviations for operations under emergency conditions—

(1) The Administrator will issue an appropriate amendment to the certificate holder's operations specifications; or

(2) If the nature of the emergency does not permit timely amendment of the operations specifications—

(i) The Administrator may authorize the deviation orally; and

(ii) The certificate holder shall provide documentation describing the nature of the emergency to the certificate-holding district office within 24 hours after completing the operation.

§ 119.58 [Removed]

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§ 119.59 Conducting tests and inspections.

(a) At any time or place, the Administrator may conduct an inspection or test to determine whether a certificate holder under this part is complying with title 49 of the United States Code, applicable regulations, the certificate, or the certificate holder's operations specifications.

(b) The certificate holder must—

(1) Make available to the Administrator at the certificate holder's principal base of operations—

(i) The certificate holder's Air Carrier Certificate or the certificate holder's Operating Certificate and the certificate holder's operations specifications; and

(ii) A current listing that will include the location and persons responsible for each record, document, and report required to be kept by the certificate holder under title 49 of the United States Code applicable to the operation of the certificate holder.

(2) Allow the Administrator to make any test or inspection to determine compliance respecting any matter stated in paragraph (a) of this section.

(c) Each employee of, or person used by, the certificate holder who is responsible for maintaining the certificate holder's records must make those records available to the Administrator.

(d) The Administrator may determine a certificate holder's continued eligibility to hold its certificate and/or operations specifications on any grounds listed in paragraph (a) of this section, or any other appropriate grounds.

(e) Failure by any certificate holder to make available to the Administrator upon request, the certificate, operations specifications, or any required record, document, or report is grounds for suspension of all or any part of the certificate holder's certificate and operations specifications.

(f) In the case of operators conducting intrastate common carriage operations, these inspections and tests include inspections and tests of financial books and records.

§ 119.61 Duration and surrender of certificate and operations specifications.

(a) An Air Carrier Certificate or Operating Certificate issued under this part is effective until—

(1) The certificate holder surrenders it to the Administrator; or

(2) The Administrator suspends, revokes, or otherwise terminates the certificate.

(b) Operations specifications issued under this part, part 121, or part 135 of this chapter are effective unless—

(1) The Administrator suspends, revokes, or otherwise terminates the certificate;

(2) The operations specifications are amended as provided in § 119.51;

(3) The certificate holder does not conduct a kind of operation for more than the time specified in § 119.63 and fails to follow the procedures

(3) The certificate holder will perform the operation under a contract or subcontract for the benefit of a U.S. armed service; and

(4) The Administrator finds that the deviation is based on grounds other than economic advantage either to the certificate holder or to the United States.

(d) In the case where the Administrator authorizes a deviation under this section, the Administrator will issue an appropriate amendment to the certificate holder's operations specifications.

(e) The Administrator may, at any time, terminate any grant of deviation authority issued under this section.

§ 119.57 Obtaining deviation authority to perform an emergency operation.

(a) In emergency conditions, the Administrator may authorize deviations if—

(1) Those conditions necessitate the transportation of persons or supplies for the protection of life or property; and

(2) The Administrator finds that a deviation is necessary for the expeditious conduct of the operations.

(b) When the Administrator authorizes deviations for operations under emergency conditions—

(1) The Administrator will issue an appropriate amendment to the certificate holder's operations specifications; or

(2) If the nature of the emergency does not permit timely amendment of the operations specifications—

(i) The Administrator may authorize the deviation orally; and

(ii) The certificate holder shall provide documentation describing the nature of the emergency to the certificate-holding district office within 24 hours after completing the operation.

§ 119.58 [Removed]

[(Amdt. 119-1, Eff. 2/26/96)]

§ 119.59 Conducting tests and inspections.

(a) At any time or place, the Administrator may conduct an inspection or test to determine whether a certificate holder under this part is complying with title 49 of the United States Code, applicable regulations, the certificate, or the certificate holder's operations specifications.

(b) The certificate holder must—

(1) Make available to the Administrator at the certificate holder's principal base of operations—

(i) The certificate holder's Air Carrier Certificate or the certificate holder's Operating Certificate and the certificate holder's operations specifications; and

(ii) A current listing that will include the location and persons responsible for each record, document, and report required to be kept by the certificate holder under title 49 of the United States Code applicable to the operation of the certificate holder.

(2) Allow the Administrator to make any test or inspection to determine compliance respecting any matter stated in paragraph (a) of this section.

(c) Each employee of, or person used by, the certificate holder who is responsible for maintaining the certificate holder's records must make those records available to the Administrator.

(d) The Administrator may determine a certificate holder's continued eligibility to hold its certificate and/or operations specifications on any grounds listed in paragraph (a) of this section, or any other appropriate grounds.

(e) Failure by any certificate holder to make available to the Administrator upon request, the certificate, operations specifications, or any required record, document, or report is grounds for suspension of all or any part of the certificate holder's certificate and operations specifications.

(f) In the case of operators conducting intrastate common carriage operations, these inspections and tests include inspections and tests of financial books and records.

§ 119.61 Duration and surrender of certificate and operations specifications.

(a) An Air Carrier Certificate or Operating Certificate issued under this part is effective until—

(1) The certificate holder surrenders it to the Administrator; or

(2) The Administrator suspends, revokes, or otherwise terminates the certificate.

(b) Operations specifications issued under this part, part 121, or part 135 of this chapter are effective unless—

(1) The Administrator suspends, revokes, or otherwise terminates the certificate;

(2) The operations specifications are amended as provided in § 119.51;

(3) The certificate holder does not conduct a kind of operation for more than the time specified in § 119.63 and fails to follow the procedures

(3) The certificate holder will perform the operation under a contract or subcontract for the benefit of a U.S. armed service; and

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Included in that initiative was the directive to the Secretary of Transportation, in consultation with other appropriate officials, to consider a rulemaking to address the potential adverse impact on Rocky Mountain National Park and its visitors of overflights by sightseeing aircraft. The President's announcement also directed that the value of natural quiet and the natural experience of the park be factors in any rulemaking action, along with protection of public health and safety.

FAA Statutory Authority

The FAA has broad authority and responsibility to regulate the operation of aircraft and the use of the navigable airspace and to establish safety standards for and regulate the certification of airmen, aircraft, and air carriers. 49 U.S.C. 40104, et seq., 49 U.S.C. 40103(b). Subtitle VII of Title 49 U.S.C. provides guidance to the Administrator in carrying out this responsibility. However, the FAA's authority is not limited to regulation for aviation safety and efficiency.

The FAA has authority to manage the navigable airspace to protect persons and property on the ground. The Administrator is authorized to "prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for . . . (B) protecting individuals and property on the ground" 49 USC 40103(b)(2). In addition, under 49 USC Section 44715(a) the Administrator of the FAA, in consultation with the Environmental Protection Agency, is directed to issue such regulations as the FAA may find necessary to control and abate aircraft noise and sonic boom to "relieve and protect the public health and welfare."

The FAA construes these provisions, taken together, to authorize the adoption of this regulation, which is intended to minimize the limit the adverse effects of aircraft noise to protect visitor enjoyment of RMNP. The FAA finds that the regulation of the navigable airspace, as authorized under 49 U.S.C. 40103(b)(2), is necessary, on a temporary, limited basis, as discussed below, to control and abate aircraft noise at RMNP under 49 U.S.C. 44715. Current policies support the exercise of FAA authority to protect the RMNP in these unique circumstances, at least as an interim step while the FAA proceeds to complete a rulemaking that will address the larger issue of protecting national parks. See generally, Section 101 of the National Environmental Policy Act of 1969, as amended 42 U.S.C. 4321 and Executive Order 11514, as amended by Executive Order 11991.

Rocky Mountain National Park

RMNP receives approximately three million visitors a year, making it the sixth most visited national park in the United States, despite its relatively small size (for a major Western national park) of 265,727 acres. RMNP is located approximately 40 miles outside the city limits of Denver, Colorado, and approximately 50 miles from the Denver International Airport. The topography of the park is characterized by steep mountains, narrow valleys, and high elevations (8,000 to 14,250 ft). Seventy percent of park terrain is above 10,000 feet. In fact, excluding Hawaii and Alaska, RMNP has the highest percentage of mountainous elevations above 10,000 feet, compared to any other national park.

RMNP presents pilots with a challenging flying environment. It has high winds, often in excess of 100 mph. The Park's high altitudes diminish engine performance and propeller efficiency, making it more difficult for an aircraft to perform in high winds. The rugged terrain limits maneuverability, and the rapidly changing weather can unexpectedly envelop an aircraft. Perhaps in part for these reasons, the use of the airspace over RMNP for commercial air tour operations has so far not been extensive. Unlike many other national parks, there are currently no air tour operators overflying the park or operating in the surrounding airspace. However, other aviation users do operate in the airspace above RMNP. Due to the Park's proximity to the Denver International Airport, aircraft operating to or from the airport overfly RMNP. Arrival and departure routes above the Park are necessary to ensure the safe and efficient handling of air traffic into the airport. Traffic into the airport operates at minimum altitudes of 19,000 feet above mean sea level (MSL) for jets and 16,000 feet above MSL for turboprop aircraft. Non-commercial general aviation aircraft also overfly the Park. While these non-commercial aircraft have not themselves created any noise problem, their presence

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The Grand Canyon Air Tour Council (comment 2006) claims that the cost issue is not fully considered by the FAA. This commenter asserts that if the FAA can use a potential noise issue to justify its proposal it can use potential air tour operation in determining what is and what is not a cost on society. It recommends that the FAA: (1) Assess the monetary value of the RMNP’s worth to society; (2) examine the potential revenue that could be appropriately generated through present and future business development (including air tours); and (3) develop a financial mode that would attempt to ascertain cost to society versus other values, e.g., the opportunity to see the seventy percent of the RMNP terrain that is above 10,000 feet.

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National Business Aircraft Association, Inc. (NBAA) (comment 1843), the Grand Canyon Air Tour Council (comment 2006), NATA (comment 4229), Aircraft Owners and Pilots Association (AOPA) (comment 4356), and the NCAUWG (comment 4424) are concerned about the potential for this proposed rule becoming the model for national overflight standards affecting all national parks. While the NBAA (comment 1843) has no vested interest in commercial sightseeing operators, it takes issue with a requirement to detour around the airspace of national parks while engaging in normal operations. NBAA is opposed to regulation prohibiting overflights by persons other than those engaged in for-hire sightseeing service because “there is no substantial evidence of significant noise impact on park area from normal (non-sightseeing) overflights by general aviation aircraft.” Each of these commenters are wary of the implications of the NPRM based on the Grand Canyon National Park Rule, that is their opinion, are inherently discriminatory towards general aviation. AOPA (comment 4356) contends that due to the Grand Canyon National Park Rule, general aviation is required to fly higher altitudes than air tour operators, even though it constitutes very little transient traffic, as opposed to the thousands of overflights conducted by air tour operators. A similar point is made by NASAO (comment 4433). Several of the commenters point out that general aviation does not disturb the natural quiet of RMNP, and the current voluntary overflight altitude of 2,000 feet is one result of voluntary cooperation.

The Grand Canyon Air Tour Council (comment 2006) comments that the RMNP proposal is not separable from the FAA’s and the Department of the Interior’s project to develop national standards that will attempt to regulate all air traffic over all national parks and other possible federal land, and states that the broader issue “needs to be brought into the public domain for proper viewing.” The council recommends a voluntary agreement until the debate on national standards for park overflights is available for national scrutiny.

AOPA (comment 4356) opposes any altitude restrictions for general aviation over RMNP. It asserts that general aviation does not disturb the natural quiet of the RMNP, and the current voluntary overflight altitude of 2,000 feet has served well to negate the potential impact of general aviation overflights.

4. Economic Considerations

Since there are no operators currently performing sightseeing air tour operations over RMNP, the FAA in the NPRM determined that the expected impact of this regulatory action is negligible and that this proposed amendment would not have a significant impact on a substantial number of small entities. Since operators may be considering starting these types of operations over the park in the future, the FAA asked for comment on whether any person intends to institute commercial sightseeing operations at RMNP.

HAI (comment 4357) disagrees with the rationale that there was no need to conduct a regulatory impact analysis because “there are no operators currently performing sightseeing air tour operators over RMNP, therefore the regulatory impact is negligible.” HAI states that it is incumbent upon the FAA that an analysis of the future impact of this rule be conducted.

The Grand Canyon Air Tour Council (comment 2006) claims that the cost issue is not fully considered by the FAA. This commenter asserts that if the FAA can use a potential noise issue to justify its proposal it can use potential air tour operation in determining what is and what is not a cost on society. It recommends that the FAA: (1) Assess the monetary value of the RMNP’s worth to society; (2) examine the potential revenue that could be appropriately generated through present and future business development (including air tours); and (3) develop a financial mode that would attempt to ascertain cost to society versus other values, e.g., the opportunity to see the seventy percent of the RMNP terrain that is above 10,000 feet.

The Grand Canyon Air Tour Council further asserts that it is very difficult to comprehend how the FAA concluded in the Regulatory Evaluation section that “this rule would not have a significant impact on a substantial number of small entities and would not constitute a barrier to international trade.” The council states that the majority of air tour operators fall

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(iii) *Lack of Data.* Taking a different approach to this alternative, NATA (comment 4229) perceives that the variants presented by this alternative offer nothing more than varying forms of restrictions. This commenter assumes that the basis for this action is to enhance the environment of the Park by visitors on the ground by limiting air tour operations during these periods. However, NATA asserts, no quantifiable data exists as to how limiting air access to the Park will enhance the experience of visitors on the ground. According to a survey of Park users conducted by the NPS, about 90 percent of the visitors to the Park stated that their enjoyment of the Park would be affected by helicopter noise. This commenter states that using this data to limit all overflight operations is ludicrous, and “the FAA cannot apply theoretical data to a nonexistent situation.”

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Temsco Helicopters (comment 4575), which supports alternative three, states that time and seasonal restrictions of alternative two would make any kind of air tour operation unworkable. For example, seasonal restrictions would make operations economically unfeasible and would close the park to one type or class of visitor for a portion of the year.

USATA (comment 4563) disapproves of imposing limits on the routes used by air tour aircraft and points out that the ability of these aircraft to operate away from populated areas is a positive factor. USATA states that air tours would cause the least amount of environmental damage to wilderness areas and would therefore be supporting the mission of the Wilderness Act to preserve the “primeval character and influence” of these areas.

USATA goes on to point out its difficulties with Variants A, B, and C. USATA says that the 2,000 feet AGL limitation of Variant A would be in effect a “one-size-fits-all” approach would could exacerbate the presence of sound from aircraft; this was the case in Haleakala National Park which was required to meet a 1,500 foot AGL minimum by SFAR 7 1. USATA also states that the time limitations of Variant B would be unreasonable because it would be impossible to present many of the wonders of the park in the absence of flight. Finally, USATA says that the seasonal limitations of Variant C would threaten the viability of air tour operations seeking to operate in RMNP because many of these companies would need to operate year round in order to stay in business.

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a. *Support.* The Grand Canyon Air Tour Council (comment 2006) contends that this is the only viable option. This commenter believes that a voluntary agreement is necessary, because such an agreement provides a solution “where no authority exists for effecting regulatory options (as in the case of this RMNP NPRM).” This commenter provides reasons why the other two alternatives are not acceptable: the disregard to the interests of the elderly and handicapped to have air tour availability in the RMNP, the lack of an Environmental Impact Statement prior to the implementation of the proposed SFAR, and the fact that this proposal is based on a request by Colorado’s Governor, the Congressional delegation, and other officials from Colorado specifically, none of whom are the owners of this national park and do not represent a federal statutory authority nor a legislative mandate. Therefore, in this commenter’s opinion, it “would appear incumbent upon the FAA to decide to proceed only with Alternative Three

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developed to protect RMNP and other national park units from the adverse effects of overflights by tour operators.

Another commenter asserted that NPS's report to Congress, while espousing the restoration of natural quiet, singled out only noise as being obtrusive. The commenter alleged that this made the report incomplete and biased.

The NPS's report to Congress: *Report on Effects of Aircraft Overflights on the National Park System* responded to the Congressional mandate set forth in Public Law 100-91. The scope of the mandate was limited to the impacts of aircraft overflight on the national park system with distinctions to be made among various categories of aircraft overflights. The law made no provision to identify or compare any impacts on the national park system from other activities or sources. To the extent that other activities, such as ground transportation, may have an adverse effect on parks' environment or visitor experience, these effects can be dealt with by the NPS under its authority.

NEPA Requirements

Some commenters maintain that the FAA should prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act of 1969, prior to issuing the final rule because they contend that implementation of any of the alternatives of the proposed SFAR, except the ban alternative (Alternative 1), will have a significant adverse affect on the quality of the human environment.

According to the FAA's Environmental Order 1050.1D, the final rule is a Federal action which requires compliance with the NEPA. Consistent with the FAA Order 1050.1D, Para. 35, the FAA prepared a draft environmental assessment (DEA). The DEA did not disclose potentially significant direct or indirect impacts affecting the quality of the human environment. On November 21, 1996, the FAA announced the availability of the DEA for notice and comment. The comment period on the DEA remained open until December 23, 1996. Based on the comments received on the DEA and further analysis, the FAA has issued a Final EA. The FAA has determined that no additional environmental analysis is required and has issued a finding of no significant impact (FONSI). The final EA and FONSI has been issued and is available for review in the Docket. For copies of the documents, contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section listed above.

This final rule constitutes final agency action under 49 U.S.C. 46110. Any party to this proceeding having a substantial interest may appeal the order to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within 60 days after entry of this Order.

EPA Consultation

One commenter states that the NPRM does not cite a statutory basis for the proposed action, but if the basis is 40 U.S.C. 44715, the FAA failed to consult the EPA.

The FAA is, in fact, relying on 40 U.S.C. 44715 and has consulted with EPA. The EPA believes that the environmental assessment adequately supports a finding of no significant impact.

Airline Deregulation Act

Another commenter believes that by promulgating the NPRM, the FAA has violated Section 102 of the Airline Deregulation Act of 1978 by failing to: (1) Encourage the entry of new carriers into air transportation, (2) foster the expansion of existing carriers into additional air transportation markets, and (3) insure the existence of a competitive airline industry. The commenter cites the possibility that interstate operators might become interested in commercial air tours in the future.

The statutory obligation to encourage development and competition among air carriers is not unconstrained. The FAA has authority to regulate, restrict, or prohibit activities by operators when necessary in the public interest. The final rule effects a temporary ban on commercial

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Many of the commenters that expressed opposition to this rule stated that it is premature for the FAA to take action concerning one park within the national park system when it is currently drafting a rule to cover all aviation operations within the total national park system. The commenters felt that parks should not be dealt with on a case-by-case basis, but should be incorporated into any national standards that are promulgated.

To some extent, the FAA agrees with these concerns. For that reason, this rule will terminate when national standards are adopted. However, in view of the strong local demand for action to ensure preservation of Rocky Mountain National Park and the ripeness of this proceeding, the FAA is taking the opportunity to establish temporary protective measures at RMNP while the national standards are being adopted. By Presidential Declaration dated April 22, 1996, the President directed the Secretary of Transportation to consider and draft a Notice of Proposed Rulemaking that would propose national standards for air tour overflights of the national parks. The FAA is working on that national rule currently and will follow rulemaking procedures, including proceeding with notice and opportunity for comment, prior to taking any final action. The FAA has designed its Rocky Mountain National Park rule to terminate on the adoption of national standards.

Certain commenters raised an objection that even though the air tour ban would apply to only commercial air tour operators, the rule proposed still represents an undue threat to the public right, including that of general aviation aircraft, to transit the navigable airspace of the United States. This final rule is strictly limited to overflights by commercial air tour operators over RMNP. Air tour operations differ from general aviation operations in the frequency of trips and their operational altitudes. In addition, air tours generally operate over picturesque areas where ground traffic congregates and at altitudes intended to maximize contact with these areas. Therefore, air tour operations are distinguishable from general aviation operations to such a degree as to remove any perceived threat to the right of general aviation aircraft to transit RMNP. Under the provisions of the final rule, all other aircraft will remain undisturbed in their current routes and altitudes of flight.

Quiet Technology

Another commenter recommends that rather than banning commercial air tours over the RMNP, the FAA should follow the recommendations of a 1994 report to Congress where the NPS suggested the use of quiet aircraft technology as a means of reducing the noise effect on National Parks. The NPS report to Congress suggested that quieter aircraft could be used in substantial restoration of natural quiet in Grand Canyon National Park (GCNP). It identified Dtt C-6-300, Vistaliner and Cessna 208 Caravan airplanes, and the McDonnell Douglas "No Tail Rotor" helicopters as the quietest aircraft currently operating in GCNP. The NPS made this determination based on its evaluation of aircraft certification data derived from applicable noise certification standards in Part 36 of Title 14 of the CFR, and from NPS flyover noise measurements taken in the park. Because of the temporary nature of this rule, the FAA determined that quiet technology would not provide an adequate alternative. Quiet technology ultimately holds great promise for ensuring the compatibility of air tour overflights and the maintenance of quiet for ground-based visitors of national parks. Indeed, movement toward the use of quiet technology forms a cornerstone of the FAA's proposal for a long-term solution to overflights of the Grand Canyon. And the FAA will want to explore the role quiet technology should play in the national rule. However, for this interim period, a temporary ban on commercial air tour operations will maintain the status quo and allow an orderly resolution of questions pertaining to quiet technology and other issues. To the extent that technological change would allow the operation of commercial air tours within RMNP in a manner consistent with the protection of the Park, its resources, and its enjoyment by visitors, the FAA will review this rule in the future.

The Lack of Air Tour Operators

Certain commenters questioned whether this rule was even necessary, because aerial tours do not operate over RMNP for obvious reasons: the high altitudes of the park; aircraft loading

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Federalism Implications

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International Civil Aviation Organization and Joint Aviation Regulations

In keeping with United States obligations under the convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization Standards and Recommended Practices (SARP) to the maximum extent practicable. For this action, the FAA has reviewed the SARP of Annex 10. The FAA has determined that this action will not present any differences.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13), there are no requirements for information collection associated with the proposed regulation.

Conclusion

For the reasons set forth above, the FAA has determined that this rule is a significant regulatory action under Executive Order 12866. The FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is considered significant under DOT Regulatory Policies and Procedures.

The Amendment

The FAA wishes to be responsive to concerns about the effects of overflights on the national park system. For that reason and due to the unique situation at RMNP the FAA is temporarily banning commercial air tour operations in the vicinity of the RMNP for sightseeing purposes for the limited duration of the SFAR. In consideration of the foregoing, the Federal Aviation Administration amends Title 14 of the Code of Federal Regulations (14 CFR) parts 91, 119, 121, and 135 effective February 7, 1997.

The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 4010, 40103, 40113, 44105, 44106, 44111, 44701-44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

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